



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: BCS - 175021

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 2016, under Wis. Stat., §49.45(5)(a), to review a decision by the Rock County Dept. of Social Services to discontinue Medical Assistance (MA), a hearing was held on July 27, 2016, by telephone.

The issue for determination is whether petitioner's appeal of an MA discontinuance was timely.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner received BadgerCare Plus (BC+) MA in 2015. By a notice dated October 12, 2015, the county informed petitioner that BC+ would end November 1, 2015, because petitioner's income was over the limit. The notice informed petitioner that if he disagreed with the decision he could appeal within 45 days of the effective date, that being December 17, 2015.

3. Petitioner filed this appeal on June 11, 2016. He checked “Application Denied” on his appeal form. He has not applied for BC+ since November 1, 2015.

DISCUSSION

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a). Language concerning the right to appeal and the time limit is included on all department notices. An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner’s position on the merits.

This appeal was processed as one challenging the discontinuance of BC+ effective November 1, 2015, but if so it was filed well after the 45-day limit for appealing. During the hearing petitioner focused exclusively on the concurrent appeal concerning an overpayment. He did not allege that a more recent BC+ application was denied. I thus will dismiss this appeal as untimely. The overpayment issue will be covered in a separate decision.

CONCLUSIONS OF LAW

Petitioner’s appeal of a BC+ discontinuance was filed untimely.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of July, 2016

\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 29, 2016.

Rock Cty. Dept. of Social Services
Division of Health Care Access and Accountability